

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Terrorist Attacks on September 11, 2001	03 MDL 1570 (RCC) ECF Case
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This document relates to:

Ashton, et al. v. Al Qaeda Islamic Army, et al., 02-CV-6977

DECLARATION OF STEVEN K. BARENTZEN

STEVEN K. BARENTZEN, on this 2nd day of March 2006, hereby declares pursuant to 28 U.S.C. § 1746, and under the penalties of perjury, that the foregoing is true and correct:

1. I am an attorney licensed to practice law in the State of New York and the District of Columbia. I am an associate with the law firm of DLA Piper Rudnick Gray Cary US LLP and I submit this declaration in support of the Reply Memorandum of Law of Muhammad Ashraf, M. Omar Ashraf, Iqbal Unus, Mohammed Jaghlit, Ahmed Totonji and Yaqub Mirza in Further Support of their Motions to Dismiss Pursuant to Rule 12(B)(6) For Failure to State a Claim.

2. Attached as Exhibit A is Michael Isikoff and Mark Hosenball, *Probe Closed*, Newseek National News (June 3, 2005), <http://www.msnbc.msn.com/id/8062039/site/newsweek>.

3. Attached as Exhibit B is Tom Jackman, *Man Gets 13 Months in Terror Probe Case*, Washington Post.com (January 14, 2005), <http://www.washingtonpost.com/ac2/wp-dyn/A8150-2005Jan13>.

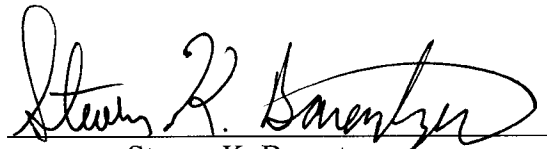

Steven K. Barentzen

EXHIBIT A

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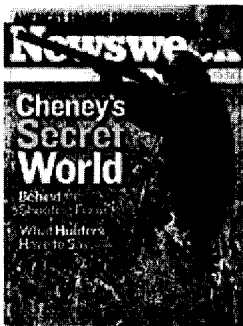
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Column / Terror Watch

Michael Isikoff and Mark Hosenball

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Probe Closed

The suspension of a Swiss investigation into a suspected Al Qaeda could affect Washington's global battle against funders of terror.



Nada greets former Iraqi dictator Saddam Hussein in this undated picture

WEB EXCLUSIVE

By Michael Isikoff and Mark Hosenball

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Newsweek

Updated: 7:30 p.m. ET June 3, 2005

June 1 - In a significant setback for the Bush administration's international crackdown on those it suspects of funding terrorism, Swiss prosecutors have "suspended" a long-running criminal investigation into Al Taqwa, an Islamic network that Washington believes has provided financing for Al Qaeda and other terror groups.

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Youssef Nada, founder and head of Al Taqwa, told NEWSWEEK by telephone that his lawyer had received a letter from the Swiss federal attorney general's office earlier today informing him that an investigation which the office had launched in the weeks after the 9/11 attacks was to be closed. In an order issued earlier this year, a Swiss court had given the prosecutor's office until May 31 to either present the results of its investigation to a judge for further proceedings or close the file.

Mark Wiedmer, spokesman for the Swiss Attorney General's office in Bern, said that the investigation was not absolutely terminated but "suspended" because it could be restarted if new evidence was acquired by Swiss authorities. But Wiedmer acknowledged that prosecutors concluded that after three and a half years of investigation they could not put together enough evidence in time for the May 31 deadline to convince a federal investigating magistrate that a criminal case against Nada and Al Taqwa could be taken to trial. Hence the investigation had to be closed for now.

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By the same token, Wiedmer said, "We don't say they [Nada and Al Taqwa] are innocent." The

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lengthy investigation, he argued, was a "qualified success" because prosecutors now know "what's the matter [with Al Taqwa], we know what's not the matter and we know where we don't know what's the matter."

Because his name remains on U.S. and U.N. sanctions lists, Nada said, the Swiss prosecutors' decision to close down their Al Taqwa criminal investigation was, for him, insufficient vindication. "I'm still in the same position," Nada complained. Under terrorism-finance sanctions imposed by the U.S. and U.N. after 9/11, the known assets of "designated" terrorist financiers like Nada and his associates are supposed to be frozen, and their physical movements are supposed to be limited to their countries of residence.

Nada said Swiss investigators, who began their inquiry a few weeks after 9/11 with raids on the homes and offices of Nada and other Al Taqwa associates, had conducted a worldwide inquiry looking for evidence that the network had financed terrorism and "come up in the end with empty hands."

He said the U.S. Treasury should now reassess the evidence that led it to put him, his associates, and Al Taqwa on its sanctions list, and called on President Bush to order an investigation into how and why the Treasury pursued what Nada characterized as a miscarriage of justice against him. U.S. authorities, he said, had bought into inaccurate information linking him and Al Taqwa to terrorism through what he said was a "chain of misleadings." He declined to specify how he believed U.S. officials were misled or who misled them.

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EXHIBIT B

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Man Gets 13 Months In Terror Probe Case

2nd Attempt at Long Sentence Rejected

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By Tom Jackman
Washington Post Staff Writer
Friday, January 14, 2005; Page A05

A federal judge in Alexandria yesterday rejected the government's second attempt to obtain a long prison sentence for a local financier tied to a terrorist leader, sentencing the man instead to 13 months and one day in prison.

Soliman S. Biheiri, 52, is one of two people convicted as a result of a three-year federal investigation into local financing of terrorism. Prosecutors indicted him twice on charges tangentially related to terrorism. Both times, they asked U.S. District Judge T.S. Ellis III to impose sentences of at least five to 10 years. Each time, Ellis refused.

In Biheiri's second conviction, he was found guilty of lying to a federal agent during an interview at Dulles International Airport, when he was asked about his ties to Islamic Resistance Movement leader Mousa Abu Marzook. Biheiri denied having financial links to the terrorist leader, though documents showed he had been investing money on Marzook's behalf since the 1980s.

Prosecutors argued that Biheiri's lie obstructed their probe of Islamic groups in Northern Virginia being investigated for links to terror. They wanted a five-year term rather than a sentence of eight to 14 months for lying.

On the witness stand, though, Internal Revenue Service agent Mary Balberchak acknowledged that she and Customs agent David Kane already had information about Biheiri's links to Marzook when they interviewed Biheiri -- but that they had forgotten it. Because the government knew about the financial tie between Biheiri and Marzook, "it is not able to carry its burden that there was an actual obstruction of justice," Ellis said.

At the start of his trial in October, Biheiri pleaded guilty to one count of passport fraud. That count -- like the count of lying to a federal agent, on which a jury convicted him -- calls for jail time of eight to 14 months, according to federal sentencing guidelines.

But the passport charge carried a possible maximum sentence of 10 years. And after Wednesday's landmark Supreme Court ruling declaring that sentencing guidelines no longer were mandatory, Assistant U.S. Attorney David H. Laufman invited Ellis to ignore the guidelines, saying, "The shackles are off this court."

But Ellis declined, saying that the Supreme Court suggested that the sentencing guidelines still should be considered in devising sentences and that he thought they were appropriate in Biheiri's case.

Biheiri founded the investment firm BMI Inc. in 1986 and sought in its financing to adhere to Islamic principles, which forbid certain investments and make charging interest unlawful. He said yesterday that he saw an opportunity to help Muslims in the United States obtain money to buy houses and cars, and that Marzook first approached him in the late 1980s.

Prosecutors showed that Marzook brought in more than \$1 million in investment capital for BMI.

Investigators believed that Biheiri, an Egyptian native, was sent to the United States to launch a financial organization that could support terror groups.

In 1995, the government formally designated Marzook as a terrorist, meaning that all financial dealings with him were prohibited. But defense attorney David Schertler said prosecutors could not show that any money went from Biheiri back to Marzook after 1995. The statute of limitations had expired on dealings before that, so more serious terror-related charges were not an option for prosecutors.

Biheiri was first indicted and convicted in 2003 on immigration fraud charges. Although sentencing guidelines called for a term of no more than six months, prosecutors argued for a 10-year sentence because of Biheiri's financial links to Marzook and the bin Laden family.

Ellis said the government had not shown that the immigration fraud was linked to terrorism. "I never supported terrorism," Biheiri said yesterday. "If you want to see a real victim of terrorism, it is me."

Ellis vehemently rejected Biheiri's claim to be a victim. He said if Biheiri had been convicted of a terror-related charge, instead of lying to an agent, "he could confidently count on the maximum."

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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of March, 2006, I caused an electronic copy of the foregoing Declaration of Steven K. Barentzen to be served by email upon all parties scheduled for electronic notice.

/s/ Steven K. Barentzen
Steven K. Barentzen (SB-8777)